reach have been obtained at the expense—in the details—of so much inaccuracy, congestion of data, and blurred logic.

The unmixed merits possessed by the book are its concreteness and its wealth of illustrative data "painstakingly gathered through many years from original sources." The emphasis which is laid upon traffic conditions which lie back of rates, together with the analysis of those conditions, constitutes an important contribution. There is some brilliant analysis of the regulation situation in the United States; and some of the descriptions of the numerous interstate commerce cases which are cited are as interesting as any story. Finally, the social point of view is maintained throughout, a fact which makes for consistency in essentials, breadth, and permanence of value.

LEWIS H. HANEY

UNIVERSITY OF TEXAS

---

*Report of the Board of Arbitration in the Matter of the Controversy between the Eastern Railroads and the Brotherhood of Locomotive Engineers.* Report Submitted November 2, 1912. Washington: Published under the Direction of the Secretary of the Board. Large 8vo, pp. iv+123.

Under our present capitalistic system struggle between the factors in production for their share of the product is a common phenomenon. The results of these struggles have ordinarily been determined not by rules of justice but by a test of strength. Capital, through legal arrangements which have made possible our large combinations, interlocking directorates, etc., has until recently wielded the strong hand. Only within the past few years has labor, through its unions and concerted action, emerged from its passive state of submission. Another party to the struggle often overlooked is the consuming public. Especially important are the interests of this third party in the operations of public service corporations. The measure in which the public is affected is determined by the intensity of the struggle; and the intensity of the struggle, in turn, rests upon the relative strength of the opponents.

The great strength of these contestants, the magnitude of the problem, the gravity of the situation and the predicament of the consuming public, and the inadequacy of the Erdman act will be quite obvious to the reader who turns the pages of this report of the Board of Arbitration. The report covers in all 123 pages, including statistical tables and charts showing the rates of pay of railway employees in

various sections of the United States, taken, for the most part, from the statistical reports of the Interstate Commerce Commission.

After relating briefly the history of the case before it, the members of the board turn aside to discuss the relative positions of the railroads and of the engineers. In considering the return which should go to capital, they are in perfect accord with the previous holdings of the Interstate Commerce Commission, that the railroads are entitled to a fair return on the capital invested, but feel that such fair return is not capable of accurate determination in the absence of a competent physical valuation of the railroads of the country. They say (p. 40): "But only when we have the physical valuations of the various roads concerned, and can compare them with the funded debt and the bonds and stocks, shall we know the relative amounts which are claimed for 'values as going concerns.'"

In the absence of any "generally accepted theory of the division of income between labor and capital, . . . . the Board feel compelled to base their award upon existing facts, rather than upon a theory regarding the division of the fruits of industry," and therefore resort to a comparison of the rates and earnings of engineers in the eastern district (1) with those of engineers in the western and southern districts; and (2) with those of other classes of railway employees. As a result of this investigation, the board conclude that the engineers are entitled to a fair wage, and that the establishment of a minimum wage for each class of service is the best means of accomplishing this end.

The general considerations in the latter part of the report are of especial concern to those interested in the promotion of harmony between capital and labor. The board criticize the Erdman act, and recommend a permanent wage commission analagous to the Interstate Commerce Commission.

The majority report is signed by six of the seven members of the board, with an explanatory note by Mr. Willard, representing the railroads. Mr. Morrissey, the representative of the engineers, submits a minority report in which he criticizes (not without justification in some instances) certain findings of the board. Especially does he attack the use of statistics by the board; and the proposition of a permanent wage commission, on the ground that it would "strike at a vital and fundamental principle affecting the legal and economic rights of railway employees."

The board, by reason of the limitations placed upon them, are quite conscious of their inability to make the thorough investigation which the

situation demands, and to arrive at a solution which will be fundamentally correct and just to all parties concerned. The most that can be hoped for is a satisfactory compromise, not substantial justice. The report is chiefly valuable, not for the decision reached, nor for the data submitted and considered, nor for the reasons invoked in support of the findings, nor for the possible permanency of the award, but for the point of view which it suggests to the reader—the serious possibilities of the present system, the inadequacy of legislation now in force, and the need of a better correlation of the interests of labor, capital and other members of society in the operation of industry.

B. WALTER KING

UNIVERSITY OF CHICAGO

---

*Power of the Federal Judiciary over Legislation.* By J. HAMPDEN DOUGHERTY. New York & London: Putnam, 1912. 8vo, pp. viii+125. $1.50 net.

This little book is one of a number lately published treating the questions involved in the judicial power of declaring laws unconstitutional. It is rather a popular propaganda monograph against the doctrines of the recall of judges and judicial decisions than a scholarly treatise on its given subject.

The author apparently assumes that the only reason for the agitation for the recall of judges or decisions is the excessive use or abuse of the power to declare laws unconstitutional. Hence he seeks to show that this judicial power to declare laws unconstitutional was known in other countries before it was adopted in the United States, that it was intentionally and *expressly* given to the courts in the Constitution by the founders, and that it has worked well on the whole. Finally the author gives a few modifications which, he thinks, will eliminate whatever faults have crept into our practice of declaring laws unconstitutional.

On the question of whether the practice of allowing the courts to declare legislative acts unconstitutional exists or existed in other countries or systems of jurisprudence, the author makes no pretense at authoritative study of the sources; but gives general quotations from other writers which, he contends, show this practice was known in other countries. No distinction is drawn by the author between the power of a court to declare unconstitutional the legislative acts of a subsidiary state and the power of holding void the acts of a co-ordinate legislative body. Of the former power there are instances in other countries; of the latter, it is practically agreed among students of the subject, there are